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LAW OFFICES
COHN AND MARKS

STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
MARK L. PELESH
J. BRIAN DE BOICE

ALLAN R. ADLER
CHARLES M. OLIVER
EDWARD N. LEAVY

SUSAN V. SACHS
JOHN R. PRZYPYSZNY
A. SHEBA CHACKO*
KEVIN M. GOLDBERG**
*MEMBER OHIO BAR ONLY
**MEMBER MARYLAND BAR ONLY

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY B. COHEN

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**
SUITE 600
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827

DIRECT DIAL: 202-452-4844
INTERNET ADDRESS: jbd@cohnmarks.com

February 12, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Suite 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Uniform Rate-Setting Methodology, CS Docket No. 95-174

Dear Mr. Caton

On behalf of MediaOne, Inc., there are herewith submitted an original and nine copies of MediaOne's comments for consideration by the Commission in the above-referenced docket.

Should additional information be desired in connection with this submission, please contact the undersigned.

Very truly yours



J. Brian DeBoice

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of)

Implementation of Sections of)

the Cable Television Consumer)

Protection and Competition Act)

of 1992 -- Rate Regulation)

Uniform Rate-Setting Methodology)

CS Docket No. 95-174

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COMMENTS OF MEDIAONE

MediaOne, Inc. ("MediaOne"), by counsel, hereby submits its comments on the Commission's Notice of Proposed Rulemaking, FCC 95-472 (rel. Nov. 29, 1995) ("NPRM"), in the above-referenced proceeding.

I. Statement of Interest

MediaOne operates a cluster of ten cable television systems that serve Atlanta, Georgia and surrounding Atlanta metropolitan area communities. Due largely to historical factors, and despite a close similarity of channel lineups, each of MediaOne's Atlanta-area systems currently has slightly different basic service tier ("BST") and cable programming service tier ("CPST") rates. The Commission's NPRM accurately portrays the problems that disuniformity of rates for similar or identical services can cause, including consumer confusion and discontent, administrative burdens and operational and marketing inefficiencies.

MediaOne applauds the Commission's initiative in proposing a uniform rate-setting methodology to help eliminate the adverse effects caused by needlessly fragmented rate structures. By allowing cable operators to establish uniform BST and CPST rates throughout systems that are

clustered, the Commission will 1) benefit cable consumers by permitting more “consumer-friendly” pricing, customer service and consumer education initiatives, while at the same time ensuring that rates remain reasonable; 2) benefit local franchising authorities (“LFAs”) and other bodies charged with regulating cable rates, including the Commission itself, by reducing the administrative burdens involved in reviewing a multiplicity of differing rates; 3) benefit cable operators by allowing more efficient, cost-effective rate setting, marketing and promotional practices; and 4) benefit the public at large by promoting fair and effective competition among cable operators and other providers of multi-channel video and related services.

II. The Two Proposed Methods for Unifying Rates

MediaOne strongly supports the first of the Commission’s two proposed approaches for achieving uniform rates -- that involving reduction of BST rates to the lowest calculated rate and recovery of lost BST revenues via an averaged CPST rate. Although the Commission’s second proposed approach -- involving an averaged BST rate -- may have advantages for some systems, it might also present certain problems from the standpoint of LFA jurisdiction over BST rates. MediaOne does not object to the second approach as an alternative, but believes the first approach to be preferable, if only one of the two methods is adopted.

The first approach also holds out the advantage of encouraging lower rates for BST service. As the Commission has previously recognized (in, for example, the Time Warner and Continental Cablevision social contracts), reduced rates for BST service are in the public interest. The BST generally consists primarily of the signals of local broadcast television stations, together with public, educational and governmental access channels (“PEG channels”). The public interest content of these local broadcast and access channels led Congress to specify that they be included in the BST -- and thus be made available to all cable subscribers. Reduced rates for BST service help to promote

the widespread availability of the BST's public interest programming by making the BST more affordable to low income households, senior citizens on fixed incomes and others of limited means.

III. Limitations on Use of Uniform Rate Methodology

A. Geographic Limits

MediaOne believes the Arbitron ADI and the Nielsen DMA are logical areas within which to permit use of the uniform rate methodology. Within such areas, costs for programming, labor and other relevant variables will usually be similar or identical. As the Commission indicates (NPRM at ¶ 14), the number of "must carry" signals will also be similar or identical, as will copyright compulsory license royalty fee obligations. ADIs and DMAs are large enough to allow for significant economies of scale and other benefits that result from uniform rate-setting, yet are not so large as to attenuate the purposes of uniform rates (such as regional advertising or the benefits of a "one service/one price" policy in a given region or metropolitan area).

In order that the geographic limitation not arbitrarily constrain use of the uniform rate methodology, MediaOne suggests a per se rule that uniform rates may be set within an ADI or a DMA, together with a procedure for Commission approval of uniform rate-setting within other or larger areas, upon a public interest showing.

B. Uniform Rates for Multiple Systems and in Regulated and Unregulated Areas

It is important that cable operators be allowed to implement uniform rates across multiple systems (i.e., areas served by more than one headend). System configuration has no relevance to the benefits that uniform rates can provide. (The issue of channel uniformity across separate systems poses a different question and is addressed in section III(C), below.) The Commission is therefore correct in proposing (NPRM at ¶13) to allow uniform rates across more than one technical "system."

Cable operators should also be allowed to include in their uniform rate calculations franchise

areas that are not currently subject to LFA rate regulation. To exclude such areas would defeat much of the purpose of uniform rate-setting. Often, as many as one-half or more of the franchise areas being served by a cluster of systems are not subject to ongoing LFA rate regulation. MediaOne also agrees with the Commission's proposal (NPRM at ¶17) that operators be required to charge the calculated uniform rates in unregulated areas if such areas are included in the calculations leading to the uniform rate. To do otherwise would be inequitable and could skew the "revenue neutral" aspect of the uniform rate-setting methodology.

The Commission has inquired (NPRM at ¶19) how the establishment of a uniform BST rate for both regulated and unregulated franchise areas might be affected by an LFA rate order requiring a refund or prospective rate reduction in one of the regulated franchise areas. Such an order should not cause difficulty under the NPRM's first proposed uniform rate approach, where the uniform BST rate is the lowest of all BST rates calculated, under Commission rules, for the franchise areas in question. If the order results in a new lowest BST rate -- and hence requires that the uniform BST rate be changed -- then the uniform BST rate would be lowered everywhere to the new indicated BST rate. The BST revenues foregone would be recalculated, leading to an appropriate adjustment to the uniform CPST rate. Similarly, any refund ordered could be made to the relevant BST subscribers in the jurisdiction ordering the refund, or could alternatively be satisfied by means of an appropriate adjustment in the next annual rate filing. See NPRM, ¶22; section VI(B), *infra*.

If, on the other hand, the LFA order does not relate to the lowest BST rate (and hence to the uniform BST rate being charged), but rather concerns a higher BST rate which the cable operator calculated for the LFA's franchise area and included in the overall BST revenue loss calculations leading to the uniform CPST rate, then the remedy would be a recalculation of the foregone BST revenues for that franchise area and an appropriate adjustment to the uniform CPST rate. Here, too,

refunds could be made, to the extent ordered, to subscribers -- in this case CPST subscribers -- in the ordering jurisdiction, or could alternatively be made in the form of an adjustment to the next set of calculated rates.

Inherent in the process of setting uniform rates across multiple franchise areas is the potential -- probably more theoretical than real -- for conflicting or contradictory LFA decisions. To the extent that such conflicts arise, and MediaOne believes they will be rare, the Commission can resolve them by means of its existing appellate jurisdiction over LFA rate orders.

C. Degree of Channel Lineup Uniformity Required

The Commission should not make perfect uniformity of channel lineup a precondition to use of the uniform rate methodology. As the Commission recognizes (NPRM at ¶23), differing local franchise requirements as to PEG channels can result in some differences in channel lineup on the BST. Minor differences in channel lineup should be no bar to uniform rate setting. Under existing benchmark formula rules, systems with identical channel lineups will often have different per channel rates (both for the BST and for the CPST), due to historical differences and to other franchise area-specific variables. A uniform rate for closely similar services is no more problematic -- indeed, it is probably less so -- than is the present situation of differing rates for identical services.

The Commission should adopt a “bright line” standard governing the degree of channel disuniformity that will be per se permissible for uniform rate purposes, and should consider situations that do not meet that standard on a case-by-case basis. MediaOne suggests the following per se standard: Uniform rates may be used where no more than twenty-five percent of BST channels, other than PEG channels, carry services not universally available on the BST in the uniform rate system(s); and where no more than twenty-five percent of CPST channels carry services not universally available on the CPST in the uniform rate system(s). Where the percentage yields

a number of channels plus a fraction of a channel, the result should be rounded up to the nearest whole channel.

This standard would permit up to a twenty-five percent difference in the number of available BST channels (not including PEG channels) and up to a twenty-five percent difference in the number of available CPST channels. It would also permit differences in the program services available on systems, including systems with the same number of channels, so long as the degree of difference does not exceed the percentage limitations. PEG channels are excluded, because they are generally required by local franchise and because there are typically no programming costs associated with providing such channels. As discussed in section VI(C), below, the franchise-imposed costs of providing PEG channels can and should be separately itemized on subscriber bills.

In addition, the Commission should allow cable operators that are in the process of upgrading a “cluster” of systems so as to achieve a single, unified channel lineup for all systems (other than PEG channel differences) to set uniform “pre-upgrade” rates for the pre-upgrade portions of the systems. Since uniform “post-upgrade” rates would in any event be allowed for the post-upgrade portions of the system(s), due to their uniform channel lineup, uniform “pre-upgrade” rates should also be permitted during the course of the upgrade, without regard to any differences in the pre-upgrade channel lineups. This policy will permit an operator to use the same rate-setting methodology for all portions of its systems while the upgrade is underway. It will also encourage investment in new fiber networks and will help to reduce the special problems of rate disuniformity that can occur during upgrades. Instead of numerous different sets of pre-upgrade rates and a single, uniform set of post-upgrade rates, the operator would be allowed to adopt one uniform set of pre-upgrade rates and one uniform set of post-upgrade rates, thus greatly simplifying its rate structure.

IV. Uniform Installation and Equipment Rates

The Commission also asks (NPRM at ¶¶16,17 & 19) for comment on how equipment rates should be dealt with in the uniform rate context. MediaOne sees no reason why operators that use the uniform rate methodology should not also be permitted to establish uniform equipment and installation rates throughout the areas in which the uniform BST and CPST rates apply. Uniform equipment and installation rates offer many of the same advantages as uniform program service rates -- including simplicity for the consumer, efficiency for the cable operator, reduced burdens for the regulator and improved promotional and marketing opportunities that, in turn, help to foster effective competition. Uniform equipment and installation rates could be established using region-wide data applicable to the areas where uniform rates are being implemented, or they could be established by a process of revenue-neutral averaging analogous to the methods proposed in the NPRM for setting uniform BST and CPST rates. Given the benefits of uniform equipment and installation rates, MediaOne believes the Commission should permit (but not require) the establishment of such rates in areas where uniform BST and CPST rates are being implemented.

V. Annual Adjustments to Uniform Rates

The Commission proposes (NPRM at ¶20) that uniform BST and CPST rates be adjusted annually, on a regional basis, pursuant to Form 1240 and the going forward rules. MediaOne supports this proposal, although there would appear to be no reason to preclude, as an alternative, a quarterly adjustment procedure using Form 1210. If only one method is to be available, however, the annual method is plainly preferable.

The mechanics of the annual adjustment need not be different than those used to establish the initial uniform rates. Under the NPRM's first proposed approach, the annual adjustment would simply 1) recalculate the current indicated BST and CPST rate, under Commission rules, for the

discrete franchise areas in question; 2) establish the lowest calculated BST rate as the new, uniform BST rate for all areas; 3) calculate the BST revenues foregone due to the BST rate reduction; 4) calculate the total CPST revenues that would be derived from all areas, based on the calculated CPST rates; 5) average the total CPST revenues across all CPST subscribers in all areas; and 6) add to that average the per CPST subscriber portion of the BST revenues being foregone, thus yielding the new, uniform CPST rate for all areas.

VI. Other Issues

A. Limits on CPST Rate Increases

MediaOne opposes the imposition of a limit on the amount of a yearly CPST rate increase under the uniform rate methodology, and also opposes the alternative suggestion that certain CPST rate increases might be phased-in over a two-year period. See NPRM, ¶21. The proposed uniform rate methodology contains inherent safeguards that make limitations on rate increases unnecessary. To begin with, the uniform rate methodology is structured so as to flow from the existing rate regulation rules in a way that is revenue neutral to the cable operator. Beyond this, the proposed geographic (ADI or DMA) and channel lineup requirements (that the lineups be similar, although not identical -- see section III(C), above) limit use of the methodology in ways that should be more than adequate to prevent unreasonable rate increases. A phase-in procedure would also be burdensome to administer, in that it would potentially conflict with future annual adjustments and could require a repeated, on-going series of overlapping “phase-ins” -- something that would simply add another layer of complexity to an already complex rate regulation scheme.

B. Local Tolling Orders

The Commission also inquires (NPRM at ¶22) about the possible effects of LFA tolling orders on implementation of uniform rates. At least where an annual adjustment methodology is

used (pursuant to Form 1240), tolling orders should present no significant timing difficulties. Under Section 76.933(g), annual rate adjustments may take effect 90 days after submission of the Form 1240 rate justification, and the only provision for an LFA tolling order involves the situation in which an incomplete Form 1240 submission has been made. See 47 C.F.R. § 73.933(g). The same procedure should be followed with respect to implementation of uniform rates. MediaOne also supports the Commission's proposal that any rate discrepancies found by an LFA be made subject to a later "true up" process in which corrective adjustments are made in the rates for the following year. See NPRM, ¶22.

C. Itemization of PEG and other Franchise-Related Costs

The Commission inquires (NPRM at ¶24) how best to account for differences in franchise-specific cost pass-throughs, such as PEG channel and other franchise-imposed costs, in the context of uniform rates. MediaOne believes the solution here is simple. As the Commission recognizes, such costs can be treated as external to the uniform BST and CPST rates and reflected as separate line items on subscriber bills in those franchise areas to which the costs pertain. This is a precise, equitable way to reflect such LFA-imposed external costs, and the Commission should make clear that cable operators that implement uniform rates are required to treat such franchise-specific costs as external to the BST and CPST rates and to reflect them as separate line items on subscriber bills. This is, indeed, what Congress encouraged, if not required, in Section 622(c) of the Act. See 47 U.S.C. §542(c). Itemization provides a beneficial form of consumer information and consumer protection. It tells cable subscribers the amount of their bill that is, in essence, a local tax that either goes directly to the LFA (in the form of franchise fees) or for the support of LFA-imposed requirements (such as PEG channels). Public policy and Section 622 of the Act disfavor including such costs as a "hidden tax" in the BST or CPST rate, and thus the Commission should require that

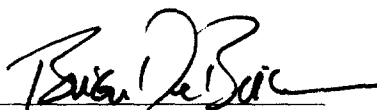
these costs be separately itemized and not included within uniform BST or CPST rates.

VII. Conclusion

The Commission's NPRM is a welcome development. It addresses a significant problem with the current scheme of cable rate regulation and proposes a solution that will benefit the consumer, the cable operator, the regulator and the public. It is particularly important, as the Commission recognizes (see NPRM, ¶12), that cable operators have the flexibility to establish uniform rates for networks that transcend local franchise area boundaries. Only in this way will cable operators be able to meet the competition of other service providers, all of whom are typically free of any regulatory restraint that would prevent region-wide uniform rate offerings. One of the Commission's primary objectives in administering the Cable Act's rate regulation provisions has been to hasten the day when effective competition will render cable rate regulation obsolete. The NPRM in this proceeding represents a significant step in that direction.

Respectfully Submitted

MEDIAONE, INC.

By: 
Ronald A. Siegel
J. Brian DeBoice

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Cohn and Marks
Suite 600
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 293-3860

Its Attorneys